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Supreme Court of the United States.

OCTOBER TERM, 1902.

THE NORTHERN SECURITIES COMPANY, The Northern Pacific Railway Company, The Great Northern Railway Company, James J. Hill, et al., appellants,
v.
THE UNITED STATES.
No. 696.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

MOTION TO ADVANCE.

This is a bill in equity filed in the circuit court of the United States for the district of Minnesota to restrain a violation of the act of July 2, 1890 (26 Stats., 647), entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

In the year 1901 the Northern Pacific Railway Company and the Great Northern Railway Company operated two parallel and competing transcontinental lines of railway extending across the northern tier of States west of the Great Lakes, from the Great Lakes

and the Mississippi River to the Pacific Ocean, each system connecting at its eastern terminals, not only with lines of railway, but with lake and river steamers to other States and to foreign countries, and at its western terminals with seagoing vessels to other States, Territories, and possessions of the United States, and to foreign countries, and were then engaged in active competition with one another in freight and passenger traffic among the several States and with foreign countries.

Early in that year these two railway companies, acting for the purpose of promoting their joint interests, and, as the Government claims, in contemplation of the ultimate placing of the Northern Pacific and Great Northern systems under a common source of control, united in the purchase of the total capital stock of the Chicago, Burlington and Quincy Railway Company, issuing for that purpose about $200,000,000 of their joint bonds, at the rate of $200 in bonds for each $100 in stock of the Burlington road. The Burlington system was about 8,000 miles in length, covering the vast region between Chicago and St. Paul on the east and Kansas City, Denver, Cheyenne, and Billings on the west, and was gradually pushing its rails northwesterly into the territory occupied by the purchasers and westwardly toward the Pacific Ocean. It connected with the Great Northern and Northern Pacific systems at St. Paul and with the Northern Pacific system at Billings, Mont., and was in part parallel and competing with the Union Pacific system.

Shortly after the purchase of the Burlington system, the controlling stockholders of the Northern Pacific and Great Northern companies organized, under the laws of New Jersey, the Northern Securities Company, with a capital stock of $400,000,000, for the purpose of exchanging its stock for the stock of the two railway companies, at the rate of exchange of $115 of the capital stock of the Northern Securities Company for each share of the capital stock of the Northern Pacific, and $180 of the capital stock of the Northern Securities Company for each share of the capital stock of the Great Northern. The subscribed capital of the Northern Securities was but $30,000, and its authorized capital of $400,000,000 was just sufficient, when all issued, to represent and cover the exchange value of the entire stock of the two railway companies at the rate agreed upon, which was about $122,000,000 in excess of the combined capital stock of the two railroad companies taken at par.

This suit was brought against the Northern Securities Company, the two railway companies, and their controlling stockholders, for the purpose of dissolving the merger resulting from the creation of a holding corporation and the turning over to it of the stock of the railway companies.

It is the contention of the Government that, by the creation of the holding corporation and its taking over the stock of the competing railway companies, the individual stockholders of the formerly competing railway companies were to be eliminated and a

single common stockholder, the holding company, was to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in the railway companies and having become stockholders in the holding corporation, both were to draw their dividends from the earnings of both systems, collected and distributed by the holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to wit, the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monop-

oly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established.

It is further contended that the Northern Securities Company was not organized in good faith to purchase and pay for the stocks of the Great Northern and the Northern Pacific railway companies. It was organized solely to incorporate the pooling of the stocks of said companies. It is a mere depositary, custodian, holder, and trustee of the stocks of the Great Northern and the Northern Pacific railway companies, and its shares of stock are virtually but beneficial certificates issued against such railroad stocks to designate the interest of the holders in the pool.

The interesting question in this case is whether a holding corporation created to take over the stock of companies competing in interstate commerce, and thus pool their earnings, consolidate their control, and remove all inducement for effective competition between them, escapes the prohibition of the law.

The Attorney-General having certified that the case was one of "general public importance," it was heard before a circuit court composed of the four circuit judges of the eighth circuit, pursuant to the provisions of the act of Congress of February 11, 1903 (33 Stats., 823), entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce

against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted."

As the case is one of recognized general public importance, the Attorney-General respectfully moves the court to advance it upon the docket for hearing on an early day during the next term convenient to the court.

Opposing counsel concur in this motion.

P. C. KNOX,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.